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MEMO ENDORSED

November 14, 2012

VIA E-MAIL (sullivanysdchambers@nysd.uscourts.gov)

Honorable Richard J. Sullivan
United States District Court Judge
United States District Court
Southern District of New York
500 Pearl Street, Room 640
New York, NY 10007

USDS SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: 11/15/2012

Re: *Altas et al v. Philippe North America Restaurants LLC., et al*
Case No. 12 Civ. 5032

Dear Judge Sullivan:

We represent the Plaintiffs in the above-referenced action. I apologize for the letter writing campaign in this case. However, today a new piece of highly relevant evidence has come into our possession, and we seek the Court's permission to submit it. Specifically, today I received an audio recording of part of the November 7, 2012 meeting described by Ariel Kliot in his November 8, 2012 declaration. This recording is highly relevant to Plaintiffs' contention that Stratis Morfogen, one of Philippe Restaurant's ("Philippe") owners, is improperly pressuring employees not to participate in this lawsuit and is therefore crucial to the hearing scheduled for November 16, 2012.

To be sure, the audio recording makes unequivocally clear that Mr. Kliot's description of the November 7, 2012 meeting, and not Defendants' description, is accurate. The recording shows that Mr. Morfogen made an expletive-laced speech to employees aimed at discouraging employees from participating in this lawsuit. Moreover, the audio recording reveals that the supposed conflict of interest arising from my firm representing both current and former employees has been manufactured entirely by Defendants. On the recording, Mr. Morfogen threatens employees that if Plaintiffs in this lawsuit prevail in removing captains from the tip pool, Mr. Morfogen will retaliate by assigning only captains to work at parties held at Philippe, which will negatively impact tipped employees' earnings.

As the Court's Individual Practices do not permit attachments or exhibits to letters absent Court permission, we respectfully request permission to submit to the Court in advance of the November 16, 2012 hearing the audio recording of the November 7, 2012 meeting and a transcript of the same. We can produce the audio recording as either an e-mail attachment or on a CD. We thank the Court for its attention to this matter.

Respectfully submitted,



D. Maimon Kirschenbaum

cc: Joseph Labuda, Esq. (via e-mail)
Jamie Felsen, Esq. (via email)

SO ORDERED

Dated:


11/14/12
RICHARD J. SULLIVAN
U.S.D.J.